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Liechtenstein

Branch Reporter
Bernhard Canete*

Summary and conclusions

In Liechtenstein, certain entities are treated as separate taxpayers for corporate income tax purposes. Consequently, the income derived at the level of the entity is only taxed in the hands of the entity rather than being attributed to the owners or shareholders of that entity. In contrast, general and limited partnerships are transparent for tax purposes and are not subject to corporate income tax, i.e. the partners are individually taxed on their share of profits.

According to the new Liechtenstein Tax Act (SteG), which is applicable as of 2011, legal persons are subject, along with their entire corporate income, to unrestricted corporate tax liability if their domicile or effective place of management is in Liechtenstein. The criterion for an entity to be classified as taxable is, in general, legal personality according to Liechtenstein law. According to article 44(1) SteG legal persons include in particular corporate bodies, such as companies limited by shares (*Aktiengesellschaften*), establishments (*Anstalten*) and foundations (*Stiftungen*). In Liechtenstein, the classification as taxable entity is necessarily mandatory. There is no option system that allows for an election for or against the status as a taxable entity. The Liechtenstein Tax Act provides certain personal tax exemptions for entities and certain corporate income is exempt from corporate income tax. However, the tax exemptions do not affect the status as taxable under article 44(1) SteG. Furthermore, associated legal persons may form a corporate group and set off losses arising in a given year within the corporate group against profits generated during the same year. The taxable entity status of the group parent or the group members is not affected if an entity is part of the group taxation regime.

Furthermore, according to the new Liechtenstein Tax Act also legal persons who have neither a domicile nor effective place of management in Liechtenstein are, along with their domestic corporate income, subject to restricted tax liability. The foreign entities have to be comparable to the domestic entities in order to be subject to corporate income tax. The SteG does not provide any explicit criteria which define a foreign entity as comparable. However, the key criterion for a foreign entity to be classified as taxable is, in general, legal personality according to the foreign entity's jurisdiction. According to the fiscal authority, it is presumed

* Fiscal Authority of the Principality of Liechtenstein, Deputy Head International Division; Lecturer at the Institute for Austrian and International Tax Law, WU

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that entities that are covered by the EU Parent–Subsidiary Directive are comparable to domestic entities. Furthermore, the fiscal authority considers foreign entities to be comparable if a foreign entity is in substance actually structured like a domestic taxable entity and the characteristics of the entity, e.g. limited liability, third-party management, transferability of shares, outweigh those of a non-taxable entity. For the characterization of an entity there is no order of prevalence of criteria and there are no "must have" criteria. Instead, the overall impression is decisive. The tax treatment of the entity in the foreign country is, in general, not relevant for the treatment of the entity as taxable in Liechtenstein. However, the foreign tax status could be an indication of the domestic tax status. In addition, there is no option system available under which an election is possible for a foreign entity to be treated as taxable.

Entities which are treated as taxpayers in Liechtenstein are, in general, entitled to treaty benefits. A taxable entity which is exempt from tax is also considered to be a resident of Liechtenstein if it is subject to the tax laws but is exempt from tax because it meets all the requirements for exemption specified in the Liechtenstein tax laws. In contrast, entities which are not taxable typically do not qualify for treaty benefits.

1. Entity qualification in domestic tax laws

1.1. Domestic entities

1.1.1. Entities as taxpayers for income tax purposes

In Liechtenstein, certain entities, viz. legal persons, are treated as separate taxpayers for corporate income tax purposes.[1] In contrast, general and limited partnerships are transparent for tax purposes and are not subject to corporate income tax, i.e. the partners are individually taxed on their share of profits.[2]

1.1.2. "Domestic" nature of an entity

According to article 44(1) SteG, legal persons are subject, along with their entire corporate income, to unrestricted corporate tax liability if their domicile or effective place of management is in Liechtenstein. According to article 2(1)(e) SteG, "domicile" means, in the case of legal persons, the place determined by law, company contract, articles, or the like. Where no such provision exists, the effective place of management is considered the domicile.[3] The "effective place of management" means according to article 2(1)(d) SteG the place where the centre of the undertaking's supreme management is located, i.e. where the strategic management decisions that are decisive for the specific undertaking are made. The place where

1 See art. 44 *et seq.* SteG (Liechtenstein Tax Act).
2 See art. 14(4) SteG.
3 See BuA 48/2010, 61 and 62 and art. 113 PGR (Liechtenstein Law on Persons and Companies); Hosp and Langer, *Steuerstandort Liechtenstein* (2011), p. 85.

the strategic management decisions become effective or are implemented is irrelevant. An undertaking's supreme management does not exist if the management is internally bound to a principal's instructions.[4]

The SteG does not provide separate provisions for dual resident companies, i.e. the SteG treats legal persons as "domestic" if their domicile or effective place of management is in Liechtenstein irrespective of the tax treatment in a foreign country. If a company is established or registered in a foreign country but the effective place of management is in Liechtenstein that company is subject to unrestricted corporate tax liability. Conversely, if the domicile of a company is in Liechtenstein that company is subject to unrestricted corporate tax liability regardless of where the effective place of management of the company is located.

1.1.3. Key factors for classifying an entity as taxable

In Liechtenstein, the criterion for an entity to be classified as taxable is, in general, legal personality according to Liechtenstein law.[5] Consequently, the classification of corporate bodies (e.g. associations, companies limited by shares, partnerships limited by shares, companies limited by parts, private companies limited by shares, cooperative societies, mutual insurance associations), establishments and foundations,[6] as well as trust enterprises with legal personality[7] as taxable is done by reference to the Liechtenstein Law on Persons and Companies (PGR) so that it is the legal nature of the entity that governs the status of a taxable entity. However, certain investment funds are also regarded as taxable entities and are subject to corporate tax liability.[8]

1.1.4. Relevance of corporate law status

To the extent that the Liechtenstein tax law refers to the PGR for entity classification, the corporate law status is decisive for being a taxable entity. It is not possible for a corporate vehicle to be de-classified for tax purposes into a non-taxable entity. Conversely, a non-taxable vehicle is in any event treated as a non-entity for tax purposes and cannot be re-classified into a taxable entity.

1.1.5. General reference to corporate law or list/catalogue approach

Article 44(1) SteG provides that legal persons are subject to corporate tax liability. According to article 44(1) SteG legal persons include in particular the following:

(a) corporate bodies (associations (*Vereine*), companies limited by shares (*Aktiengesellschaften*), partnerships limited by shares (*Kommanditaktiengesellschaften*), companies limited by parts (*Anteilsgesellschaften*), private companies limited by shares (*Gesellschaften mit beschränkter Haftung*), cooperative societies

[4] See BuA 48/2010, 61 and 62; BuA 83/2010, 11 *et seq.*; Hosp and Langer, *op. cit.*, pp. 84 *et seq.*

[5] See BuA 48/2010, 118 and 159; Roth, *Grundriss des neuen liechtensteinischen Steuerrechts* (2011), p. 42.

[6] See art. 44(1)(a) SteG.

[7] See art. 44(1)(c) SteG.

[8] See art. 44(1)(b) SteG.

(*Genossenschaften*), mutual insurance associations (*Versicherungsvereine auf Gegenseitigkeit*), establishments (*Anstalten*), and foundations (*Stiftungen*);

(b) undertakings for collective investments in transferable securities (UCITS) as referred to in the Law on UCITS, investment undertakings as referred to in the Investment Undertakings Act, and alternative investment funds as referred to in the Law on AIFM or comparable undertakings for collective investments set up under the law of another jurisdiction, except investment partnerships (*Anlage-Kommanditgesellschaften* and *Anlage-Kommanditärengesellschaften*) without legal personality or comparable undertakings for collective investments set up under the law of another jurisdiction;

(c) trust enterprises with legal personality (*Treuunternehmen mit Persönlichkeit*).

As article 44(1) SteG refers to "legal persons" it provides to a certain extent a reference to corporate law. According to the PGR, legal persons are corporate bodies,[9] establishments and foundations,[10] and special forms and types of enterprises.[11] However, the list of article 44(1) SteG goes beyond the scope of the term "legal persons" according to the PGR as it also includes certain investment funds and trust enterprises with legal personality.[12] Therefore, the term "legal persons" used in the SteG is broader than the term "legal persons" used in the PGR. The list of article 44(1) SteG is exemplary ("legal persons … shall include in particular").[13] Therefore, entities not contained in the list could be regarded as legal persons for corporate income tax purposes as well.

1.1.6. Typical taxable entities

In a business context, typically companies limited by shares (*Aktiengesellschaften*), establishments (*Anstalten*) and foundations (*Stiftungen*) are used.[14]

1.1.7. Mandatory or optional classification

In Liechtenstein, the classification as taxable entity is necessarily mandatory. There is no option system that allows for an election for or against the status as a taxable entity. According to the government of Liechtenstein, for equality reasons no taxable person should have the possibility to select the way to be taxed.[15]

1.1.8. Varying tax status of an entity

In Liechtenstein, the tax status of an entity depends on its legal form. Corporate bodies obtain, in general, the right of legal personality through and with incorporation in

9 See title 4 in s. 2 PGR.
10 See title 5 in s. 2 PGR.
11 See title 6 in s. 2 PGR.
12 See sub-s. 2 of title 16 in s. 4 PGR.
13 See BuA 48/2010, 118; Hosp and Langer, *op. cit.*, p. 84.
14 Marxer & Partner Rechtsanwälte, *Liechtensteinisches Wirtschaftsrecht* (2009), pp. 39 *et seq.*; OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, *Peer Review Report – Phase 1: Legal and Regulatory Framework – Liechtenstein* (2011), p. 47; OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, *Supplementary Peer Review Report – Phase 1: Legal and Regulatory Framework – Liechtenstein* (2012), p. 11.
15 See BuA 48/2010, 119.

the Commercial Register (*Handelsregister*).[16] However, certain entities are not required to register, e.g. non-commercial associations and associations where no audit is required.[17] The requirement of being audited depends, in general, on the size of the association.[18] Nevertheless, for such entities the registration is only of a declaratory nature, i.e. an association regardless of whether it is registered or not, is always regarded as a taxable entity for corporate tax purposes.

Establishments without legal personality (*unselbständige Anstalten*) are not covered by the provisions for establishments (article 534 *et seq.* PGR) but fall under the provisions for trusts (article 897 *et seq.* PGR), which do not qualify as legal entities.[19] As a consequence, the tax status of establishments could vary depending on whether or not the establishment has legal personality. However, establishments without legal personality are of no practical relevance in Liechtenstein.

A trust enterprise can be set up with or without legal personality (article 932a §1 PGR). Therefore, the tax status of a trust enterprise could vary depending on the choice of the settlor.

1.1.9. Fictitious taxable entities

The Liechtenstein SteG does not provide for "fictitious taxable entities", i.e. taxpayers that derive their status as a taxable entity only from a fiction in the tax system while corporate or private law do not recognize such fictitious bodies, e.g. when the tax legislation of a country treats mere business activity (without having any separate legal status) of a state (or its political subdivision) as a taxable entity in order to secure competition neutrality with the private sector.

1.1.10. Registration with tax administration or other approval

In Liechtenstein, registration with the tax administration is not required in order to receive the status of taxable entity. However, according to article 94(1) SteG legal persons subject to corporate income tax are, by means of public announcement and delivery of a tax form, asked to submit their tax returns. Non-delivery of the form neither releases the taxpayer from tax liability nor from the duty to submit a tax return. Taxpayers who do not receive forms must demand them from the competent tax authority.[20]

1.1.11. Timing dimension

According to article 46(1) SteG, tax liability commences with the formation of the legal person or the relocation of its domicile or effective place of management to Liechtenstein (unrestricted tax liability) or at the point in time at which domestic corporate income is generated or the permanent establishment is entered in the Commercial Register (restricted tax liability). According to article 46(2) SteG, tax

[16] See art. 106(1) PGR.
[17] See art. 106(2)(2) PGR.
[18] See art. 251b(1) PGR.
[19] See art. 534(4) PGR.
[20] See Hosp and Langer, *op. cit.*, pp. 147 *et seq.*

liability ends upon conclusion of the liquidation or relocation of the domicile or effective place of management abroad (unrestricted tax liability) or upon discontinuation of domestic corporate income or deletion of the permanent establishment from the Commercial Register (restricted tax liability).[21]

1.1.12. All or nothing vs. partial

In Liechtenstein, taxable entity status is granted under an "all or nothing" principle, i.e. an entity can either be a taxable or non-taxable one, but necessarily for all of its activities. A concept of a "partial" taxable entity, where the taxable entity status is only granted for certain parts while there is non-taxable (transparent) treatment for other parts of the taxable entity, does not exist.

1.1.13. Effect of tax exemptions

The Liechtenstein Tax Act provides certain personal tax exemptions for entities (see articles 4 and 45 SteG). Furthermore, certain corporate income is exempt from corporate income tax (see article 48 SteG).

According to article 4(1), the following are exempt from tax liability:

(a) the Reigning Prince, the Hereditary Prince, the Princely Domain and the foundations which, according to the purpose set out in their articles, serve the Reigning Prince in fulfilling his obligations;
(b) the state, the municipalities, the funds of the state and the municipalities, the joint bodies of the municipalities, the citizen cooperatives, and the public enterprises not engaged in economic activities in accordance with the Law on the Management of Public Enterprises;
(c) persons who, pursuant to international law, enjoy exemption from taxation;
(d) institutions for occupational retirement provision.[22]

Furthermore, according to article 4(2) SteG, the fiscal authority must upon application exempt legal persons from tax liability if such entities without the intention of making a profit exclusively and irrevocably pursue common-benefit purposes as defined in article 107(4a) PGR. According to article 107(4a) PGR, common-benefit purposes are purposes that support the general public, i.e. if the activity serves common welfare in the charitable, religious, humanitarian, scientific, cultural, moral, social, sportive or ecological field, even if the activity supports only a certain group of people. However, the tax exemption does not apply to net corporate income generated by economic business operations maintained by such entities, provided that these operations generate income in a total amount of more than CHF 300,000.[23]

In addition, according to article 45(1) SteG the fiscal authority must upon application exempt legal persons referred to in article 44(1) SteG from corporate income tax if:

(a) they limit the payment of dividends to the notional income set out in article 5 SteG on the capital not received in the form of donations by third parties;

[21] See *ibid.*, p. 87.
[22] See *ibid.*, p. 56.
[23] See *ibid.*, pp. 56 *et seq.*

(b) their articles rule out the payment of emoluments;
(c) they serve common-benefit purposes to the exclusion of any economic activity; and
(d) upon dissolution, their articles assign the assets remaining after repayment of the capital not received in the form of donations by third parties for similar purposes.

Moreover, according to article 45(2) SteG a legal person may apply to the fiscal authority to be exempt from corporate income tax if it does not have the intention of making a profit and is engaged in non-material activities, e.g. artistic, religious, scientific, political, charitable or festive activities. The tax exemption does not apply to net corporate income generated by economic business operations maintained by such entities, provided that these operations generate income in a total amount of more than CHF 300,000. As a result, the legal person may to a certain extent engage in economic business operations; however, the income generated has to be dedicated to the non-material purposes of the entity. Furthermore, the non-material purpose of the entity has to outweigh the economic business operations of the legal person.[24]

Furthermore, according to article 48(1) SteG in the case of unrestricted taxpayers, the following may not be included in the taxable net corporate income:
(a) corporate income from the cultivation of foreign real estate used for agriculture or forestry and from any other agricultural or forestry production abroad;
(b) foreign permanent establishment results;
(c) rental and lease income from real estate situated abroad;
(d) domestic real estate capital gains, to the extent that they are subject to the real estate capital gains tax in Liechtenstein, and capital gains from the sale of foreign real estate;
(e) dividends arising from participations in domestic or foreign legal persons;
(e^{bis}) distributions from foundations, foundation-like establishments and special asset dedications with legal personality;
(f) capital gains from the sale or liquidation of participations in domestic or foreign legal persons;
(g) corporate income from the managed assets of investment undertakings in accordance with the Investment Undertakings Act;
(h) corporate income from the net assets of legal persons subject to the Pension Funds Act, provided these assets are allocated exclusively and irrevocably to an occupational retirement provision.[25]

In the case of restricted taxpayers, the following may not, according to article 48(2) SteG, be included in the taxable net corporate income:
(a) domestic real estate capital gains, to the extent that they are subject to real estate capital gains tax in Liechtenstein;
(b) dividends arising from participations in domestic or foreign legal persons;
(c) capital gains from the sale or liquidation of shares in domestic or foreign legal persons.[26]

24 See BuA 123/2011, 21; Hosp and Langer, *op. cit.*, p. 86.
25 See Hosp and Langer, *op. cit.*, pp. 93 *et seq.*; Roth, *Grundriss des neuen liechtensteinischen Steuerrechts,* pp. 50 *et seq.*
26 See Hosp and Langer, *op. cit.*, p. 95; Roth, *op. cit.*, p. 52.

The tax exemptions under articles 4 and 45 for certain entities and article 48 SteG for unrestricted and restricted taxpayers do not affect their status as taxable under article 44(1) SteG.[27]

1.1.14. Group taxation

According to article 58(1) SteG, upon application, associated legal persons may, in accordance with article 58(2), form a corporate group and set off losses arising in a given year within the corporate group against profits generated during the same year. The setoff must be carried out by attributing the loss from the group members to the group parent or – to the extent that a loss remains after setting off any attributable losses against the taxable net corporate income of the group parent – from the group parent to a group member that is subject to unrestricted tax liability in Liechtenstein. The loss must be attributed in proportion to the amount of the direct participation attributable to domestic business assets of the group parent in the nominal capital, capital stock or share capital of each group member (participation quota). The losses attributable to a group member must be limited to the proportion of the taxable net corporate income of that group member corresponding to the participation quota. Any loss carry-forward of a group member existing prior to submission of the application may not be attributed to the group parent or a group member, but may only be set off against positive taxable net corporate income of the group member which suffered the losses.[28]

The taxable entity status of the group parent or the group members is not affected if an entity is part of the group taxation regime. The group taxation regime does not provide for a tax consolidation. Furthermore, compensation payments are not required. Moreover, within the tax group the group parent and the group members are still obliged to pay the minimum corporate income tax of CHF 1,200.[29]

1.2. Foreign entities

1.2.1. "Foreign" nature of an entity

According to article 44(2) SteG, legal persons referred to in article 44(1) SteG who have neither a domicile nor effective place of management in Liechtenstein as well as special asset dedications without legal personality shall, along with their domestic corporate income, be subject to restricted tax liability.

1.2.2. Key criteria for classifying foreign entities as taxable

Article 44(2) SteG refers to legal persons as provided for in article 44(1) SteG. Therefore, the foreign entities have to be comparable to the domestic entities in order to be subject to corporate income tax. The SteG does not provide any explicit

27 See Lehner in Vogel and Lehner, *DBA*^{5} (2008), art. 4 MN 82; Lang, *The Application of the OECD Model Tax Convention to Partnerships* (2000), p. 37.

28 See Hosp and Langer, *op. cit.*, pp. 116 *et seq.*; Hosp and Langer, "Die Totalrevision des Liechtensteinischen Steuerrecht", PIStB 7/2011, p. 182 (pp. 186 *et seq.*); Roth, *op. cit.*, pp. 64 *et seq.*

29 BuA 48/2010, 145; Knörzer, "Die neue Liechtensteinische Gruppenbesteuerung", LJZ 4/10, p. 95.

criteria which define a foreign entity as comparable. However, the key criterion for a foreign entity to be classified as taxable is, in general, legal personality according to the foreign entity's jurisdiction.[30]

1.2.3. List of foreign legal forms

In Liechtenstein, it is not the foreign legal form that is decisive for taxable entity status, but legal personality according to the foreign entity's jurisdiction and the fact that a foreign entity is in substance actually structured like a domestic taxable entity. Therefore, no list of foreign legal forms that have taxable entity status is available. According to the fiscal authority, it is presumed that entities that are covered by the EU Parent–Subsidiary Directive[31] are comparable to domestic entities.

1.2.4. Comparability test

Liechtenstein does not apply a listing approach for foreign entities. Instead, a comparability test is applied, i.e. generic criteria are applied to assess whether a foreign entity is to be treated as taxable or non-taxable. The key criterion for classifying foreign entities as taxable is legal personality.[32] Furthermore, the fiscal authority considers foreign entities to be comparable if a foreign entity is in substance actually structured like a domestic taxable entity and the characteristics of the entity, e.g. limited liability, third-party management, transferability of shares, outweigh those of a non-taxable entity. For the characterization of an entity there is no order of prevalence of criteria and there are no "must have" criteria. Instead, the overall impression is decisive.

1.2.5. Relevance of foreign tax treatment

The tax treatment of the entity in the foreign country is, in general, not relevant for the treatment of the entity as a taxable one in Liechtenstein, i.e. the fiscal authority is legally not obliged to follow the classification of the entity in the foreign country. However, the foreign tax status could be an indication for the domestic tax status.

1.2.6. Optionality

In Liechtenstein, there is no option system available under which an election is possible for a foreign entity to be treated as taxable.

1.2.7. Advance clarification

In Liechtenstein, an advance clarification is available whereby the status of a foreign entity can be clarified with the fiscal authority. Such advance clarifications are done in practice.

30 See BuA 48/2010, 118.

31 See Annex I, Part A of the Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (in its current version).

32 See note 30.

2. Case studies on tax treaty entity qualification issues[33]

2.1. Treaty entitlement

Entities which are treated as taxpayers in Liechtenstein are, in general, entitled to treaty benefits. A taxable entity which is exempt from tax is also considered to be a resident of Liechtenstein if it is subject to the tax laws but is exempt from tax because it meets all the requirements for exemption specified in the Liechtenstein tax laws, e.g. entities that pursue common-benefit purposes like charitable organizations. In contrast, entities which are not taxable typically do not qualify for treaty benefits.

2.1.1. Case A

Assume that states P and S treat this entity as a taxable entity and state R as a transparent entity.

(a) If Liechtenstein is state S the treaty between states S and P would be applicable in order to reduce withholding taxes on interest and royalties, because state S (Liechtenstein) treats the entity which is established in state P as a taxable entity and attributes the income to that entity.

(b) If Liechtenstein is state R the shareholders (partners) resident in state R (Liechtenstein) would be taxed and the treaty between states S and R would be applicable, because state R (Liechtenstein) treats the entity which is established in state P as a transparent entity. Therefore, it would be possible to grant a credit in state R (Liechtenstein) for the (reduced) withholding tax levied in state S according to the maximum withholding tax rate provided for in the tax treaty between states S and R, even though the withholding tax in state S is levied on behalf of the entity established in state P and the withholding tax will already be credited in state P at the level of the entity.

2.1.2. Case B

Assume that states R and S treat this entity as a taxable entity and state P as a transparent entity.

(a) See case A(a) in section 2.1.1.

(b) If Liechtenstein is state P and the interest and royalties are attributed to the permanent establishment of the shareholders (partners) located in state P (Liechtenstein), state P (Liechtenstein) would tax the interest and royalties at the level of the permanent establishment. As the partners are not resident in state P (Liechtenstein) it would not be possible to grant a credit for the (reduced) withholding tax levied in state S under the treaty between states S and P. Furthermore, the non-discrimination clause of the tax treaty between states R and P would not be applicable. Consequently, it would not be possible to grant a credit in state P (Liechtenstein) for the (reduced) withholding

[33] For a full description of the factual situation in each case study please see the General Report.

tax levied in state S under the non-discrimination clause of the treaty between states R and P.

2.1.3. Case C

Assume that state S treats this entity as a taxable entity and states R and P as a transparent entity.
(a) See answer to case A(a) in section 2.1.1.
(b) See answer to case B(b) in section 2.1.2.
(c) See answer to case A(b) in section 2.1.1.

2.1.4. Case D

Assume that states R and S treat this entity as transparent and state P as a taxable entity.
(a) If Liechtenstein is state S the treaty between states S and R would be applicable in order to reduce withholding taxes on interest and royalties, because state S (Liechtenstein) treats the entity as transparent.
(b) If Liechtenstein is state P the entity established in state P (Liechtenstein) would be taxed and the treaty between states S and P would be applicable, because state P (Liechtenstein) treats the entity which is established in state P as a taxable entity. Therefore, it would be possible to grant a credit in state P (Liechtenstein) for the (reduced) withholding tax levied in state S according to the maximum withholding tax rate provided for in the tax treaty between states S and P, even though the withholding tax in state S is levied on behalf of the individual shareholder who is resident in state R and the withholding tax will already be credited in state R at the level of the individual shareholder.

2.1.5. Case E

Assume that state R treats this entity as a taxable entity and states P and S as a transparent entity.
(a) See answer to case D(a) in section 2.1.4.
(b) If Liechtenstein is state R the individual shareholder who is resident in state R (Liechtenstein) would not be taxed on the interest and royalties received by the taxable entity established in state P, because state R (Liechtenstein) treats the entity which is established in state P as a taxable entity. As the treaty between states S and R would not be applicable it would not be possible to grant a credit in state R (Liechtenstein) for the (reduced) withholding tax levied in state S.

2.1.6. Case F

Assume that states R and P treat this entity as a taxable entity and state S as a transparent entity.
(a) See answer to case D(a) in section 2.1.4.
(b) See answer to case D(b) in section 2.1.4.

2.1.7. Case G

Assume that state P treats this entity as a taxable entity and state R as a transparent entity and that interest and royalties are derived from sources in state P.

(a) The allocation of income in state R is not relevant for state P (Liechtenstein). This scenario is treated as a mere domestic situation in state P (Liechtenstein) with the result of exclusive taxation in state P (Liechtenstein) according to article 7 or article 21 OECD model convention, since the residence state of the entity is state P (Liechtenstein).

(b) State R (Liechtenstein) is not obliged to follow the allocation of income of state P; state R (Liechtenstein) is therefore not prevented from taxing the income in the hands of the partners. State R (Liechtenstein) is allowed to levy tax on the interest and royalty income because state R (Liechtenstein) treats the entity which is established in state P as a transparent entity. A tax credit for a tax levied at the level of the entity resident in state P (underlying tax) would not be granted at the level of the partners in state R (Liechtenstein).

2.1.8. Case H

Assume that state P treats this entity as a taxable entity and state R as a transparent entity and that interest and royalties are derived from sources in state R.

(a) The allocation of income in state R is not relevant for state P (Liechtenstein). State R does not have to reduce the (withholding) tax on interest and royalties, because it treats this scenario as a mere domestic situation with the result of exclusive taxation in state R according to article 7 or article 21 OECD model convention, since the residence state of the partner is state R. A tax credit for a tax levied at the level of the individual shareholders resident in state R would not be granted at the level of the entity in state P (Liechtenstein).

(b) State R (Liechtenstein) is not obliged to follow the allocation of income of state P. State R (Liechtenstein) is therefore not forced to reduce its tax on interest or royalties. State R (Liechtenstein) is allowed to levy tax on the interest and royalty income without any limitations because state R (Liechtenstein) treats the entity which is established in state P as a transparent entity and the partners resident in state R (Liechtenstein) would be taxed. A tax credit for tax levied at the level of the entity resident in state P (underlying tax) would not be granted at the level of the partners in state R (Liechtenstein).

2.2. Distributive rules

2.2.1. Article 10 – dividends

2.2.1.1. Case A

Assume that state R treats the entity as transparent and state S as a taxable entity.

(a) If Liechtenstein is state R the income of the entity is taxed directly at the level of the partners who are resident in state R (Liechtenstein), because state R (Liechtenstein) treats the entity established in state S as transparent.

Therefore, the distribution of "dividends" is a non-taxable event from the perspective of state R (Liechtenstein). Consequently, a credit for the withholding tax levied in state S would not be possible.

(b) As state R (Liechtenstein) treats the entity established in state S as transparent Liechtenstein would not be prevented from taxing the entity's income in the hands of the partners under the tax treaty. However, if the entity resident in state S constitutes a foreign permanent establishment of the partners in state S and the income is attributable to this permanent establishment, state R (Liechtenstein) would according to article 15(2)(b) or article 48(1)(b) SteG exempt the income of the foreign permanent establishment at the level of the partners.

(c) As state R (Liechtenstein) treats the entity established in state S as transparent the income of the entity is taxed directly at the level of the partners who are resident in state R (Liechtenstein). A tax credit for a tax levied at the level of the entity resident in state S (underlying tax) would not be granted at the level of the partners in state R (Liechtenstein). If the entity resident in state S constitutes a foreign permanent establishment of the partners in state S and the income is attributable to this permanent establishment a credit of the underlying tax of the entity would, in general, be possible at the level of the permanent establishment. However, in the case of a foreign permanent establishment state R (Liechtenstein) would, according to article 15(2)(b) or article 48(1)(b) SteG, exempt the income of the foreign permanent establishment at the level of the partners. Therefore, a credit for the entity's tax levied in state S would not be possible at the level of the foreign permanent establishment.

2.2.1.2. Case B

Assume that state R treats the entity as taxable and state S as a transparent entity.

(a) If Liechtenstein is state R article 10 OECD model convention would be applicable in state R (Liechtenstein), because state R (Liechtenstein) treats the entity resident in state S as taxable and the income under domestic law as a distribution of dividends.

(b) As state R (Liechtenstein) treats the entity as taxable the income from immovable property in state S would be allocated to the entity resident in state S. Consequently, a tax credit would not be granted at the level of the shareholders in state R (Liechtenstein) for a tax levied on the income from immovable property in state S.

2.2.2. Article 11 – interest

2.2.2.1. Case A

Assume that states A and C treat the entity as transparent, while state B treats it as opaque.

(a) If Liechtenstein is state A the interest is sourced in state A (Liechtenstein) and state A (Liechtenstein) has to apply article 11 of the treaty between C

and A and reduce its withholding taxes accordingly, because state A (Liechtenstein) treats the entity as transparent. However, according to article 6(5) and article 44(3) SteG interest of non-residents is not taxable in state A (Liechtenstein).

(b) If Liechtenstein is state B the interest is sourced in state B (Liechtenstein) and state B (Liechtenstein) has to apply article 11 of the treaty between C and B and reduce its withholding taxes accordingly, because state B (Liechtenstein) treats the entity as opaque. However, according to article 6(5) and article 44(3) SteG interest of non-residents is not taxable in state B (Liechtenstein).

(c) If Liechtenstein is state C the interest is sourced in state A and state A has to apply article 11 of the treaty between C and A and reduce its withholding taxes accordingly, because state C (Liechtenstein) treats the entity as transparent. Therefore, state C (Liechtenstein) is obliged to grant a credit for the withholding tax levied in state A.

2.2.2.2. Case B

Assume that state A treats the entity as transparent, while states B and C treat it as opaque.

(a) See answer to case A(a) in section 2.2.2.1.

(b) See answer to case A(b) in section 2.2.2.1.

(c) If Liechtenstein is state C the interest is sourced in state B and state B has to apply article 11 of the treaty between C and B and reduce its withholding taxes accordingly, because state C (Liechtenstein) treats the entity as opaque. Therefore, state C (Liechtenstein) is obliged to grant a credit for the withholding tax levied in state B.

2.2.2.3. Case C

Assume that states B and C treat the entity as transparent, while state A treats it as opaque.

(a) If Liechtenstein is state A the interest is sourced in state B and state B has to apply article 11 of the treaty between C and B and reduce its withholding taxes accordingly, because state A (Liechtenstein) treats the entity as opaque.

(b) If Liechtenstein is state B the interest is sourced in state A and state A has to apply article 11 of the treaty between C and A and reduce its withholding taxes accordingly, because state B (Liechtenstein) treats the entity as transparent.

(c) See answer to case A(c) in section 2.2.2.1.

2.2.2.4. Case D

Assume that state B treats the entity as transparent, while states A and C treat it as opaque.

(a) See answer to case C(a) in section 2.2.2.3.

(b) See answer to case C(b) in section 2.2.2.3.

(c) See answer to case B(c) in section 2.2.2.2.

2.2.2.5. Case E

Assume that states B and C treat the entity as transparent, while state A treats it as opaque.

If Liechtenstein is state C the interest is sourced in state C (Liechtenstein), because state C (Liechtenstein) treats the entity as transparent. Consequently, state C (Liechtenstein) would generally not refrain from taxing that income. State C (Liechtenstein) would apply article 11 of the treaty between C and A and reduce its withholding taxes accordingly. However, according to article 6(5) and article 44(3) SteG interest of non-residents is not taxable in state C (Liechtenstein).

2.2.3. Article 13(4) – capital gains

2.2.3.1. Case A

Assume that state R treats the entity as transparent, while states P and S treat it as taxable.

(a) As state R (Liechtenstein) treats the entity as transparent article 13(4) OECD model convention is not applicable under the treaty R–S and state R (Liechtenstein) would not consider the sale to be an alienation of "shares" according to article 13(4) OECD model convention. Instead, state R (Liechtenstein) would consider the sale to be an alienation of immovable property according to article 13(1) OECD model convention.

(b) As state S (Liechtenstein) treats the entity as taxable article 13(4) OECD model convention is applicable under the treaty R–S and state S (Liechtenstein) would consider the sale to be an alienation of "shares" according to article 13(4) OECD model convention. According to article 35(1) SteG, anyone who, under the law of property, sells real estate or parts thereof situated in Liechtenstein at a gain must pay real estate capital gains tax thereon. According to article 35(3)(b)(2) SteG, the economic change of ownership of real estate, especially by way of transfer of rights of participation in legal persons whose main purpose is the purchase, possession, management and sale of real estate, is equivalent to a sale of real estate.

2.2.3.2. Case B

Assume that states R and P treat the entity as transparent, while state S treats it as a taxable entity.

(a) See answer to case A(a) in section 2.2.3.1.

(b) See answer to case A(b) in section 2.2.3.1.

2.2.3.3. Case C

Assume that states R and P treat the entity as a taxable entity, while state S treats it as transparent.

(a) As state R (Liechtenstein) treats the entity as taxable article 13(4) OECD model convention is applicable under the treaty R–S and state R (Liechtenstein)

would consider the sale to be an alienation of "shares" according to article 13(4) OECD model convention.

(b) As state S (Liechtenstein) treats the entity as transparent article 13(4) OECD model convention is not applicable under the treaty R–S and state S (Liechtenstein) would not consider the sale to be an alienation of "shares" according to article 13(4) OECD model convention. Instead, state S (Liechtenstein) would consider the sale to be an alienation of immovable property according to article 13(1) OECD model convention. According to article 35(1) SteG, anyone who, under the law of property, sells real estate or parts thereof situated in Liechtenstein at a gain must pay real estate capital gains tax thereon.

2.2.3.4. Case D

Assume that state R treats the entity as a taxable entity, while states P and S treat it as transparent.

(a) See answer to case C(a) in section 2.2.3.3.

(b) See answer to case C(b) in section 2.2.3.3.

2.2.4. Article 15(2) – income from employment

2.2.4.1. Case A

Assume that state P treats the entity as transparent, while state R treats it as taxable.

(a) From the perspective of state R (Liechtenstein), the entity established in state P would be considered to be the employer according to article 15(2)(b) OECD model convention. As the employer does not have a sufficient level of presence in state R (Liechtenstein) article 15(2) would be applicable and the remuneration derived by John would be taxable only in state P. Whether the entity established in state P is treated as transparent or taxable in state P or state R is irrelevant.[34]

(b) From the perspective of state P (Liechtenstein), the entity resident in state P (Liechtenstein) would be considered to be the employer according to article 15(2)(b) OECD model convention. As the employer does not have a sufficient level of presence in state R, article 15(2) would be applicable and the remuneration derived by John would be taxable only in state P (Liechtenstein). Whether the entity established in state P is treated as transparent or taxable in state P or state R is irrelevant.[35]

2.2.4.2. Case B

Assume that state R treats the entity as transparent, while state P treats it as taxable.

[34] See Dziurdź, "Article 15 of the OECD Model: The 183-Day Rule and the Meaning of 'Not a resident' in Cases of Hybrid Partnerships", *Intertax*, 2013, p. 492 (pp. 496 *et seq.*); Observations by Germany on paras. 91 and 92 in Annex II of OECD, *The Application of the OECD Model Tax Convention to Partnerships*, Issues in International Taxation No. 6 (1999), MN 19.

[35] *Ibid.*

(a) See answer to case A(a) in section 2.2.4.1.
(b) See answer to case A(b) in section 2.2.4.1.

2.2.5. Article 16 – directors' fees

2.2.5.1. Case A

Assume that state R treats the entity as transparent and state S as a taxable entity.

(a) If Liechtenstein is state R article 16 OECD model convention would not be applicable because state R (Liechtenstein) treats the entity as transparent and not as a "company" according to article 3(1)(b) OECD model convention. As a result, the remuneration from the entity would fall under article 15, article 7 or article 21 OECD model convention. Therefore, it would not matter that state S treats the entity as a taxable and resident person.
(b) If Liechtenstein is state S article 16 OECD model convention would be applicable although state R does not treat the entity as a resident of state S (Liechtenstein), because state S (Liechtenstein) treats the entity as a taxable entity.

2.2.5.2. Case B

Assume that state R treats the entity as a taxable entity and state S as a transparent entity.

(a) If Liechtenstein is state R article 16 OECD model convention would be applicable, although state S does not treat the entity as a resident of state S, because state R (Liechtenstein) treats the entity as a taxable entity.
(b) If Liechtenstein is state S article 16 OECD model convention would not be applicable because state S (Liechtenstein) treats the entity as transparent and not as a "company" according to article 3(1)(b) OECD model convention. As a result, the remuneration from the entity would fall under article 15, article 7 or article 21 OECD model convention. Therefore, it would not matter that state R treats the entity as a taxable and resident person of state S.